IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6425 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARANDAS R VIKANI - Petitioner(s)

Versus

AUTHORISED CHIEF SETTLEMENT COMMISSIONER & 3 - Respondent(s)

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Appearance :

MR ND NANAVATI for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1 - 2.
MR PM RAVAL for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4, 4.2.1,4.2.2

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/01/2006

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Authorised Chief Settlement Commissioner and Deputy Collector (Rehabilitation),

Revenue Department, State of Gujarat, dated 22.5.1987 by which the Appellate Authority has partly allowed the appeal preferred by the respondent No.3 and quashed and set aside the order passed by the Settlement Commissioner and Collector, Junagadh dated 2nd June 1978 and also set aside the sale certificate issued in favour of father of the petitioner No.1 i.e. Ramandas Vadhumal Vikani.

2. Shri Buch, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order has been passed in absence of the petitioner and his advocate and therefore the matter is required to be remanded and let the appellate authority pass an order afresh after giving an opportunity to the petitioner. He has further submitted that ofcourse the matter is remanded to the Settlement Commissioner and Collector, Junagadh for taking an appropriate decision afresh, however, in view of the fact that the sale certificate issued in favour of the father of the petitioner No.1 is set aside possession of the property in question would be taken over from the petitioners.

3. It is required to be noted that by impugned order the appellate authority has as such remanded the matter to the Settlement Commissioner and Collector, Junagadh, for taking an appropriate decision afresh after giving opportunity to the respondent No.3, original-appellant. In view of the

fact that the matter remanded is at large before the Settlement Commissioner and Collector, Junagadh for taking an appropriate decision afresh, the petitioners would also be heard at the relevant time and therefore no prejudice would be caused to the petitioners.

4. Under the circumstances, without going into the legality and validity of the submission whether the appellate authority was justified in proceeding further with the hearing of appeal ex-parte or not, the present Special Civil Application is not entertained, as this being a petition against the order of remand. However, it is once again observed that the Settlement Commissioner and Collector, Junagadh will have to take an appropriate decision, on remand, afresh in accordance with law and on merits without in any way being influenced by the order passed by the appellate authority and it will be open for the petitioners, respondent No.3 and other concerned parties to take all contentions which are available to them under law. In view of the fact that interim relief is in operation till date, it will be in fitness of things to maintain status-quo as on today till the Settlement Commissioner and Collector, Junagadh takes an appropriate decision afresh, on remand. The Settlement Commissioner and Collector is

directed to complete the proceedings within six

months from the date of receipt of this order. Rule is made absolute to the above extent with no order as to costs.

[M.R. Shah, J.]

RMR.